

CHAPTER 4 – WHERE TO FILE

STATUTORY REFERENCES: **RSA 173-B:2 (Jurisdiction and Venue)**
 RSA 173-B:3 (Commencement of Proceedings; Hearing)
 RSA 490:27(a) (Validity of Faxed Warrants and Orders)

INTRODUCTION

RSA 173-B:2 provides that the district and superior court have concurrent jurisdiction in cases brought pursuant to the domestic violence law. In Grafton and Rockingham Counties, the Family Division also has jurisdiction of domestic violence cases.

COMMENT

The legislature's intention in providing for concurrent jurisdiction was to offer victims of domestic violence the greatest possible accessibility. The statute clearly contemplates, however, that except in unusual circumstances, the district court or Family Division will be the court in which petitions are initially filed.

A. WHICH COUNTY OR DISTRICT?

PROTOCOL 4-1

RSA 173-B:3, I provides that a petition may be filed in:

- a. the district court covering the jurisdiction where the plaintiff or defendant resides; or
- b. the superior court of the county where the plaintiff or defendant resides.
- c. RSA 173-B:2, II provides that if the plaintiff has left the household or premises to avoid further abuse, the plaintiff shall have the option to commence proceedings pursuant to RSA 173-B:3 in the county or district where the plaintiff temporarily resides.

COMMENT

As a practical matter the plaintiff should be permitted to file at any court location. If necessary the case should thereafter be transferred to the appropriate court.

PROTOCOL 4-2

Clerks of the district court shall be available for the filing of domestic violence petitions during normal business hours, as established by the Supreme Court, and at such other times as set forth by administrative order.

PROTOCOL 4-3

If during normal business hours a plaintiff seeks a protective order at a time when no judge will be available within 30 minutes, district court clerks should process the petition in the following manner:

- a. Ask the plaintiff to complete the domestic violence petition.
- b. While the plaintiff is working on the petition, the clerk should attempt to locate the presiding judge. If the judge is not available, the clerk should locate any district court judge to review the petition.
- c. Once the judge is located, arrangements should be made to FAX the petition and temporary order form to the judge for review.
- d. The judge should review the petition and decide whether or not to grant a temporary order. The judge should complete the appropriate paperwork and FAX it back to the court.
- e. Once received at court, the paperwork should be processed in the usual manner.

COMMENT

RSA 490:27-a provides that domestic violence temporary orders may be applied for and issued by facsimile transmission. Any oath required for the issuance of these orders may be taken telephonically.

NOTE: Under no circumstances shall a clerk send a plaintiff to another court because of the unavailability of a judge in the building.

PROTOCOL 4-4

Notwithstanding the process as set out in Protocol 4-3, the plaintiff may choose to have the petition heard at another district court or at the superior court. If so, the clerk shall contact said court, and make such other arrangement as may be necessary to effectuate the speedy review of the petition.

PROTOCOL 4-5

If a plaintiff is not temporarily or permanently residing within the jurisdiction of the court in which the petition is filed or, failing that, if the defendant is not a resident thereof, the court should refer the case to the appropriate jurisdiction after completion of the temporary orders. Prior to completing the orders, the clerk should contact the transferee-court to obtain the hearing date to be included in the orders of notice. The paperwork supporting a petition and order should be transferred to the court of appropriate jurisdiction immediately by fax and then sent by mail within **five (5) calendar days**. In the event of a referral to another jurisdiction, the court shall follow the process outlined above in Protocol 4-3. Court staff shall fax the transfer order to the AOC.

B. TRANSFER TO ANOTHER DISTRICT COURT

RSA 173-B:2, III provides that any proceeding under this chapter may be transferred to another court on motion by either party or the court, as the interests of justice or the convenience of the parties may require. The receiving court must nonetheless have jurisdiction to hear the case.

COMMENT

While this section would appear to authorize the free transfer of domestic violence cases between the district and superior courts and among the various district court locations around the State, such a broad interpretation is discouraged. The possibility of delay resulting from transfer and the myriad other problems resulting from moving cases from court to court are more serious in cases as potentially volatile as these.

PROTOCOL 4-6

No domestic violence case should be transferred to another district or superior court absent a written finding by the transferring court of the facts which indicate that the interests of justice or convenience of the parties require such transfer.

PROTOCOL 4-7

When a case is transferred to another district court, the clerk of the sending court shall notify the clerk of the receiving court by phone on the date of the order and obtain a date and time for hearing in the receiving court. The clerk shall then send forthwith the transfer order and all original

documents to the receiving court, keeping copies at the transferring court. The sending clerk shall confirm all addresses of parties and send or give each party a notice of the next-scheduled hearing at the receiving court. The transfer order must be faxed to the AOC in order to update the Registry.

PROTOCOL 4-8

Transfer may be appropriate in the following circumstances:

- a. where both parties reside in a district other than where the domestic violence is alleged to have occurred;
- b. where the evidence or witnesses are more easily accessed in another district;
or
- c. where related matters are pending in another court.

C. TRANSFER TO THE SUPERIOR COURT

RSA 173-B:3, V requires the court, at the time a petition is filed, to determine whether there is an action pending in superior court arising out of the same situation for which the plaintiff is seeking the restraining order in the district court. If such an action is pending in the superior court, the matter shall be transferred to the superior court unless justice or expediency require that the district court act on the petition.

COMMENT

In many instances, if there is a domestic relations action between the parties pending in the superior court, the case may be transferred to that court. The answer depends on the facts of each case and what justice requires.

NOTE: In any case where the plaintiff satisfies the burden of proof for issuance of a temporary restraining order, the court must issue the order regardless of the pendency of a superior court action.

PROTOCOL 4-9

At the time the petition is filed, the plaintiff should be asked whether an action involving the parties is presently pending in the superior court. If an action is pending, court staff should call the other court to ascertain certain basic information regarding the action including:

- a. names of the parties and children of the parties;
- b. the nature and status of the action; and
- c. what, if any, outstanding orders regarding contact between parties, custody, support, visitation, use of premises and use of property have been issued.

NOTE: The court should inquire whether there are pending actions in any other court, including within or outside New Hampshire.

PROTOCOL 4-10

When the district court determines that there are existing orders issued pursuant to RSA 169-B, C or D, or RSA 458, the court should conduct the temporary hearing on the allegations contained in the petition. If an order is granted, the case should be transferred to the appropriate court.

PROTOCOL 4-11

In the event a motion is filed to transfer a petition to the superior court, the motion should be reviewed by the judge and a written finding made as to whether justice and expediency require the district court to retain jurisdiction over the case. In every case where transfer is made, the transferring judge shall make a written finding, setting forth the facts upon which the order is based. (RSA 173-B:3, V.)

COMMENT

Appropriate considerations in determining whether to transfer include, but are not limited to, the following:

- a. imminence of danger to the plaintiff;
- b. geographic accessibility to the superior court;
- c. whether the previously pending case in the superior court is scheduled for hearing within thirty days;
- d. existence of any superior court orders; or
- e. whether the superior court has had an opportunity to hear the plaintiff's allegations in the context of the case pending in that court.

COMMENT

Fitchner v. Pittsley, decided June 19, 2001, suggests that where there is an existing order on custody, the district court should transfer the case to superior court, presumably after conducting the temporary hearing and issuing protective orders.

PROTOCOL 4-12

Once the decision is made to transfer the case, it should be sent to a designated department or individual in the appropriate superior court within forty-eight hours.

PROTOCOL 4-13

The AOC shall be notified of the transfer of the case and the order to transfer shall specify the court to which transfer is being made.

NOTE: This section would not apply in counties where the Family Division is located.

COMMENT

From time to time, parties may file and be granted conflicting orders from two courts. On these occasions, there should be communication between the courts and a final decision made with respect to the most appropriate venue for the proceedings.